

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)	
ARM 12.6.1101, 12.6.1103, 12.6.1106,)	
12.6.1109, 12.6.1112, 12.6.1116,)	
12.6.1118, 12.6.1120, 12.6.1122,)	NOTICE OF AMENDMENT,
12.6.1124, 12.6.1125, 12.6.1126,)	ADOPTION, AND REPEAL
12.6.1127, 12.6.1128, 12.6.1130, the)	
adoption of NEW RULES I - V, and the)	
repeal of ARM 12.6.1119 and)	
12.6.1121 regarding falconry regulation)	
in Montana)	

TO: All Concerned Persons

1. On May 28, 2009, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-352 pertaining to the public hearings on the proposed amendment, adoption, and repeal of the above-stated rules at pages 792 of the 2009 Montana Administrative Register, Issue Number 10.

2. The commission has amended ARM 12.6.1101, 12.6.1122, 12.6.1127, and 12.6.1128 and adopted New Rules I [ARM 12.6.1131], II [ARM 12.6.1134], III [ARM 12.6.1132], and V [ARM 12.6.1133] as proposed.

3. The commission has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.6.1103 FALCONRY PERMIT CLASSES The department issues three classes of permits.

(1) through (1)(c) remain as proposed.

(d) may possess only one raptor as described in 50 C.F.R. 21.29 (c)(3)(i)(E) and may not ~~obtain~~ take more than ~~one~~ two raptors ~~for replacement from the wild~~ during any ~~12-month period~~ calendar year;

(e) through (2)(b) remain as proposed.

(c) must submit documentation from a sponsor to the department stating that the permittee has practiced falconry at the apprentice falconer level or equivalent for at least two years, including maintaining, training, flying, and hunting raptors for at least four months in each year. That practice may include capture and release of falconry raptors.

~~(e)(d)~~ must possess and train or hunt with a raptor for portions of at least two seasons in the practice of falconry at the apprentice level ~~or its equivalent~~ and must be recommended by the sponsor;

~~(d)(e)~~ may possess up to three raptors and shall not ~~obtain~~ take more than two raptors ~~for replacement birds~~ from the wild during any ~~12-month period~~ calendar year;

(e) and (f) remain as proposed but are renumbered (f) and (g).

(3) through (3)(b) remain as proposed.

(c) shall not possess more than five wild raptors and ~~shall not obtain~~ may not take more than two raptors ~~taken from the wild for replacement birds~~ during any 12-month period calendar year;

(d) through (f) remain as proposed.

(g) shall not take from the wild in any ~~12-month period~~ calendar year, as a part of the five-bird limitation, more than one raptor listed as threatened in 50 C.F.R. 17.11, and then only in accordance with those regulations; and

(h) through (3)(h)(ii) remain as proposed.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, 87-5-205, 87-5-206, MCA

12.6.1106 HANDLING EQUIPMENT (1) A permittee must have jesses or the materials and equipment to make them, leash and swivel, bath container, and appropriate scales or balances, capable of weighing to the gram or half ounce, ~~for weighing raptors~~ in the permittee's possession.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1109 EXAMINATION

(1) and (2) remain as proposed.

(3) Any applicant failing to score 80 percent will only be allowed to retake the written examination at 30-day intervals. Applicants may not take the examination more than three times in one calendar year.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1112 TAKING, POSSESSING, AND TRANSPORTING RAPTORS FOR FALCONRY (1) and (2) remain as proposed.

(a) Take of peregrine falcons from the wild is limited to the time periods specified by commission rules. Take is limited to permittees ~~that~~ who have received a peregrine take permit from the department and the conditions associated with that permit.

(b) through (d) remain as proposed.

(e) A raptor taken from the wild must be reported by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized by the department. Reporting must be done at the first opportunity to do so, but no later than ten days after the capture of the bird.

(f) If a permittee who intends to possess a bird is present at the capture site, he or she is considered the person who removes the bird from the wild and is responsible for filing a 3-186A form or by submitting the information electronically as authorized by the department reporting take of the bird from the wild even if another person captures the bird for the permittee.

(g) If a permittee is not at the immediate location where the bird is taken from the wild, the person who removes the bird from the wild must be a general or master falconer, and must report take of the bird. If that person then transfers the bird to the permittee, both must file 3-186A forms or submit the information electronically as authorized by the department reporting the transaction at the first opportunity to do so, but no later than ten days after the transfer. The bird will count as one of the two raptors the person who took it from the wild is allowed to capture in any year. The bird will not count as a bird the permittee took from the wild. The person who takes the bird from the wild must report the take even if he or she promptly transfers the bird to the permittee.

(h) If a permittee has a long-term or permanent physical impairment that prevents the permittee from attending the capture of a species for falconry, a general or master falconer may capture a bird for the permittee. The permittee is then responsible for filing a 3-186A form or by submitting the information electronically as authorized by the department reporting the take of the bird from the wild and the bird will count against the take of wild raptors that the permittee is allowed in any year.

(3) through (4) remain as proposed.

(a) The bird may be reported as take by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized by the department at the first opportunity to do so, but no more than ten days after capture of the bird. The bird must be treated by a veterinarian or a permitted wildlife rehabilitator and the bird will count against the permittee's possession limit.

(b) remains as proposed.

(5) If a permittee acquires a raptor; transfers, rebands, or microchips a raptor; if a raptor is stolen; if a raptor is lost to the wild and not recovered within 30 days; or if a bird for falconry dies, the permittee must report the change within ten days by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized by the department.

(6) and (7) remain as proposed.

(a) must be reported within ten days of the transaction by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized by the department.

(b) will count as one of the raptors the permittee is allowed to take from the wild that calendar year.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, 87-5-206, MCA

12.6.1116 FEATHERS (1) remains as proposed.

(2) Feathers from a falconry bird, other than those from a golden eagle, may be donated ~~from a falconry bird, except golden eagle feathers,~~ to any person or institution with a valid permit to have them or to any person exempt from the permit requirement under 50 C.F.R. 21.12.

(3) remains as proposed.

(4) If a permit expires or is revoked, all feathers of any species of falconry raptor, except a golden eagle, may be donated to any person or any institute exempt from the permit requirement under 50 C.F.R. 21.12 or authorized by permit to

acquire and possess the feathers. Any feathers not donated must be burned or destroyed. Feathers from a golden eagle must be sent to the National Eagle Repository.

AUTH: 87-1-201, 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1118 ENFORCEMENT (1) Falconry birds, facilities, equipment, and records may be inspected only in the presence of the permittee during normal business hours on any day of the week by department officials.

AUTH: 87-1-201, 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1120 FALCONRY PERMITS (1) through (1)(b) remain as proposed.
(c) Applicants shall submit payment of a ~~\$450~~ 125 state permit fee with the application.

(d) Upon program certification by the service, a first-time apprentice falconer permit will be issued for a reduced fee of \$50. That first-time permit application fee must be submitted prior to taking the falconry examination.

(2) through (5) remain as proposed.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1124 MARKING (1) If a goshawk (Accipiter gentiles), Harris's hawk (Parabuteo unicinctus), peregrine falcon (Falco peregrinus), or gyrfalcon (Falco rusticolus) is taken from the wild, acquired from a rehabilitator, or from another falconer, the raptor must be banded with a permanent, nonreusable, numbered service leg band provided by the department. An International Organization for Standardization (ISO) compliant (134.2 kHz) microchip may be purchased and implanted in the bird ~~in lieu of~~ in addition to a band. Contact the department for information on obtaining and disposing of bands. Within ten days from the day on which the raptor is taken from the wild, it must be reported, including band number and/or microchip information, by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized by the department. An appropriate band may be requested from the department in advance of any effort to capture a raptor.

(2) A raptor bred in captivity must be banded with a seamless metal band, in accordance with (see 50 C.F.R. 21.30). ~~It also may~~ or have an implanted ISO-compliant (134.2 kHz) microchip. If a seamless band is removed or lost, a request for a replacement service nonreusable band must be requested from the department and the required information must be reported immediately upon rebanding or microchipping the raptor by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized by the department. A band that is removed or lost, must be replaced or an ISO-compliant (134.2 kHz) microchip must be implanted in the bird and the microchip information

reported by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized.

(3) If the band must be removed or is lost from a raptor, the loss of the band must be reported within five days, and then the permittee must do at least one of the following:

(a) request a service nonreusable band from the department and submit the required information immediately upon rebanding the raptor by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized by the department; or

(b) purchase and implant an ISO-compliant (134.2 kHz) microchip in the bird and report the microchip information by submitting a 3-186A form to the department or by submitting the information electronically as authorized by the department.

(4) through (7) remain as proposed.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1125 TEMPORARY HOLDING OF RAPTORS (1) remains as proposed.

(2) A permittee's raptor may be cared for by another falconry permittee for up to 120 consecutive calendar days. The permittee caring for the raptor must have a signed and dated statement authorizing temporary possession, plus a copy of form 3-186A showing the permit under which the bird is held ~~they are the possessor of each of the raptors.~~ The statement must include information about the time period of care and the allowable activities to be done with the bird.

(3) through (6)(d) remain as proposed.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1126 TRANSFER OF WILD RAPTORS (1) Wild raptors held by a permittee may be permanently transferred to a resident authorized to possess raptors for falconry purposes provided:

(a) the permittees submit a federal form 3-186A or submit the information electronically as authorized by the department;

(b) through (2) remain as proposed.

(a) the permittees submit a federal form 3-186A or submit the information electronically as authorized by the department;

(b) and (c) remain as proposed.

(3) Captive-bred raptors held by a permittee may be permanently transferred to residents or nonresidents authorized to possess raptors, provided the permittees submit a federal form 3-186A or submit the information electronically as authorized by the department in accordance with the reporting requirements of ARM 12.6.1103.

AUTH: 87-5-204, MCA
IMP: 87-5-204, MCA

12.6.1130 RELEASE OF RAPTORS (1) through (2)(b) remain as proposed.

(c) the release must be reported by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized by the department.

(3) through (3)(b) remain as proposed.

(c) the release must be reported by submitting a paper form 3-186A to the department or by submitting the information electronically as authorized by the department.

(4) remains as proposed.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

4. The commission has adopted the following rules as proposed but with changes from the original proposal, matter to be stricken interlined, new matter underlined.

NEW RULE IV (12.6.1135) RAPTORS USED FOR EDUCATION

(1) through (1)(d) remain as proposed.

(e) Conservation education programs must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation. Falconry birds may not be used for P~~presentations that do not address falconry and conservation education may not be presented.~~

(f) through (4) remain as proposed.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

5. The commission proposed to repeal ARM 12.6.1119 but decided not to repeal this rule.

6. The commission repealed the following rule:

12.6.1121 FACILITIES AND EQUIPMENT

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

7. Fifteen written comments were received during the comment period and ten verbal comments were recorded at public meetings. Of the 25 comments, 22 were generally in support of the new falconry regulations with a few suggesting minor changes as indicated below. Three individuals offered comments opposed to the new falconry regulations or the practice of falconry in general. The commission has thoroughly considered the comments and testimony received. A summary of the comments received and the commission's responses are as follows:

COMMENT #1: The increase of the permit fee from \$25 to \$150 is significant and will cause a hardship on falconers, especially young apprentice falconers just entering the sport.

RESPONSE #1: The United States Fish and Wildlife Service (service) issued new federal regulations requiring state falconry programs to become certified and eliminating the federal falconry permit. Upon the certification of Montana's falconry program by the service, the Department of Fish, Wildlife and Parks (department) will be solely responsible for the regulation of Montana's falconers and the associated costs.

The commission revised ARM 12.6.1120 from the proposed fee of \$150 and adopted a \$125 permit fee in order to prevent an increased cost to Montana's falconers.

The commission also adopted new language in ARM 12.6.1120 to provide a first-time apprentice permit fee of \$50 instead of the current \$125.

COMMENT #2: The department should provide summary information to falconers regarding the number of days falconers spend in the field annually, the type and quantity of game taken, and the number of wild raptors captured.

RESPONSE #2: The commission appreciates this comment and will communicate the request to the department.

COMMENT #3: An export permit should not be required to ship wild birds captured in Montana to other states.

RESPONSE #3: Montana statute does not allow nonresidents to come to Montana and capture wild raptors in the state. The export permit requirement, which has been in the administrative rules since 1992, is a means for the department to track shipment of Montana wild caught raptors to nonresidents and potentially to limit export if abuse in the shipment of Montana wild caught raptors out of state is identified.

COMMENT #4: Clarify the units of measure for the scales and balances used to weigh raptors.

RESPONSE #4: The commission revised and adopted ARM 12.6.1106 stating that scales and balances must be capable of weighing to the gram or half ounce.

COMMENT #5: Renewal for falconry licenses should be every five years rather than every three years.

RESPONSE #5: The commission is not willing to lengthen the term of the license. The three-year term allows for contact with falconers to assure that individual information has not changed for each falconer including locations of mews,

verification that bird inventories kept by the department coincide with what is reported on the renewal form, and that mailing addresses have not changed.

COMMENT #6: The proposed changes should not be adopted because they make the rules less restrictive resulting in less protection for the resource and increase workload for the department.

RESPONSE #6: The commission is dedicated to the protection of all of Montana's resources and proposed the changes in order to comply with the new federal regulations for falconry and to obtain a certified falconry program. The federal regulations were based on published scientific evidence that falconry has no impact on the raptor resource. The nationwide take of raptors each year averages 1100 birds and a significant portion of which are red-tailed hawks. The rules, as adopted by the commission, do not increase the allowable take of raptors from the wild for the sport of falconry. Although some of the changes to the rules are less restrictive (for example, allowing apprentice falconers to practice falconry with a wider variety of raptor species), some changes are more restrictive (for example, requiring the use of two radio transmitters on a hybrid raptor when flown).

The department will have an increase in workload upon certification of the falconry program by the service. The department is accepting of the increased workload to support the sportsmen and women of Montana.

8. These rule amendments, adoptions, and repeals are effective August 28, 2009.

/s/ Bob Ream
Bob Ream, Acting Chairman
Fish, Wildlife and Parks Commission

/s/ William A. Schenk
William A. Schenk
Rule Reviewer

Certified to the Secretary of State August 17, 2009